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JAMES N. HATTEN, Clerk
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TCB

K. E. KENNEDY a/k/a
KANDY KENNEDY

Plaintiff,

v. **CIVIL ACTION NO.** 1 10 CV 3427

NORFOLK SOUTHERN CORPORATION **JURY TRIAL DEMAND**
NORFOLK SOUTHERN RAILWAY COMPANY

Defendants

COMPLAINT

Comes now, Plaintiff, Kandy Kennedy and files this her Complaint against the above-named Defendants on the following grounds:

INTRODUCTION

This is an action for retaliation, race and age discrimination, and sex discrimination based on violations of Plaintiff's federally protected civil rights as codified in 42 U. S. C. Sec. 2000e et. Seq. (Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991), and 42 U. S. C. Sec. 1981.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U. S. C Sec. 1331 and 28 U. S. C. Sec. 1343.

3.

The Court possesses personal jurisdiction over Defendants as doing business in Georgia and with its registered agent in Macon, Georgia.

VENUE

4.

All actions alleged herein occurred within the Atlanta Division of the Northern District of Georgia. Venue in this district is proper for Defendants under 28 U. S. C. Sec 1391 (b), © and 42 U. S. C. Sec. 2000e-5(f)(3).

THE PARTIES

5.

The Plaintiff is a resident of Fayetteville, Georgia 30215.

6.

Defendants may be served with summons and process by service upon its registered agent, F. Kennedy Hall, 577 Mulberry Street, 1500 CHTR. MED, Macon, Georgia 31201.

FACTS

7.

Plaintiff is white female, date of birth January 9, 1968.

8.

Plaintiff began employment with defendant on or about October 18, 1999, as a Centralized Yard Operations Clerk (CYO) Trainee and promoted to CYO Clerk on or about November 29, 1999.

9.

Plaintiff further shows that defendants terminated Plaintiff on October 16, 2010. This was less than 90 days from the EEOC determination and right to sue letter.

10

In January 2008, Joshua K. Massey came into the Piedmont Division as Manager.

11.

On January 28,2008 Mr. Massey humiliated and embarrassed Plaintiff in front of co-workers. Plaintiff complained to Mr. Massey by e-mail dated January 31, 2008.

12.

On 2-15-08 Mr. Massey again humiliated and embarrassed Plaintiff in front of co-worker. Plaintiff complained by letter dated 2-16-08.

13.

On March 7, 2008, Mr. Massey called Plaintiff in for meeting or conference at which time the matters listed in paragraph 11 and 12 were discussed. Plaintiff complained to Mr. Massey that he treated and disciplined women especially the African American which was inconsistent discipline as to the way he treated and disciplined white males.

14.

On March 10, 2008 Plaintiff was given a negative performance review by Joshua K. Massey, manager Piedmont division. On March 10, 2008 Joshua K. Massey, Manager Piedmont Division , pulled Plaintiff out of service for 15 days, for failure to follow instructions.

15.

On March 11, 2008, Plaintiff filed grievance against Joshua K. Massey, Manager

Piedmont Division, CYO, in writing according to Rule C-3 1.(a) of the Collective Bargaining Agreement and other rights and remedies afforded by law and/or Norfolk Southern rules and regulations.

16.

Said Grievance alleged that Joshua K. Massey violated General Conduct Rule 1, in that he violated General conduct Rule 1 when he displayed conduct unbecoming on Feburary 15, 2008 and failed to conduct himself in a professional manner and engaged in behavior that was offensive and inappropriate.

17.

On March 11, 2008, Plaintiff filed a second grievance against Joshua K. Massey, Manager Piedmont Division, CYO, in writing according to Rule C-2-1.(a) of the Collective Bargaining Agreement and other rights and remedies afforded by law and/or Norfolk Southern rules and regulations. On 2-15-2008 Plaintiff delivered to Joshua K. Massey a complaint concerning his actions.

18.

Said second grievance alleged that Joshua K. Massey violated General Conduct Rule 1, he failed to perform his duties when he displayed conduct unbecoming on January 28, 2008, by embarrassing and humiliating the Plaintiff in front of co-workers. That he failed to conduct himself in a professional manner and engaged in behavior that was offensive and inappropriate. On January 31, 2008 Plaintiff e-mailed her immediate supervisor, Joshua K. Massey, complaining of his actions toward Plaintiff.

19.

On March 15, 2008, Plaintiff filed a third grievance against Joshua K. Massey, Manager Piedmont Division, CYO, in writing according to Rule C-3-1.(a) of the Collective Bargaining Agreement and other rights and remedies afforded by law and/or Norfolk Southern rules and regulations.

20.

Said Grievance alleged that Joshua K. Massey violated Norfolk Southern "NON-RETALIATION POLICY" which states "Norfolk Southern will not tolerate an act of retaliation against an employee who makes a report that they believe in good faith, reveals a violation of law, rule, regulation or this Code. State and Federal Laws may also prohibit retaliation against an employee who reports a concern or complaint they believe in good faith reveals unlawful conduct. Retaliatory act include being fired, transferred to a less position or given a negative performance reviews as a result of you reporting unlawful conduct. Any employee violating our non retaliation policy will be subject to appropriate disciplinary action, up to and including termination of employment " E-mail dated January 31, 2008 to Mr. Massey complaining of his action and violation of Norfolk Southern policy in treatment of employees.

21.

On March 15, 2008, Plaintiff filed a third grievance against Joshua K. Massey, Manager Piedmont Division, CYO, in writing according to Rule C-3-1.(a) of the Collective Bargaining Agreement and other rights and remedies afforded by law and/or Norfolk Southern rules and regulations.

22..

On March 16, 2008, Plaintiff filed a complaint with Norfolk Southern EEO, Mr. Alphonso Tabb and Ethics and Compliance Mr. Wayne Lockwood. Said complaint was received on March 20, 2008 by Norfolk Southern. The director of CYO was notified on March 20, 2008 that Mr. Lockwood was opening an investigation.

23.

The basis of Plaintiff's complaints with EEO and Ethics and Compliance, was violations of Title VII of Civil Rights Act of 1964 as amended and Norfolk Southern Policy 305 and 305.2 by Norfolk Southern and Joshua K. Massey.

24.

The complaints alleged Discrimination for Inconsistent Discipline among women, especially African American women employees of CYO. The complaint listed the names of 16 employees that had been disciplined or fired, 13 were women, 10 were African American women, 3 were African American Men. To the best knowledge or belief of Plaintiff no white males were disciplined during the period covered in the complaint.

25.

The Plaintiff further alleged Retaliation by Norfolk Southern and Joshua K. Massey.

26.

On March 17, 2008, Norfolk Southern by Regional Manager Angela Cheppelle, dismissed all of Plaintiff's grievances without granting Plaintiff a hearing or even discussing the matter with Plaintiff. In her letter of dismissal stated that the matters had been discussed with Plaintiff in conference on March 7, 2008. Plaintiff appealed the decision of Andrea Chepplle to CYO Director B. Fitzgerald, which were summarily dismissed.

27.

On March 28, 2008 a hearing was held on the 15 day suspension given Plaintiff by Joshua K. Massey.

28.

Plaintiff was fired by T. W. Williamson, regional manager on April 4, 2008, 14 days after Plaintiff filled complaint with EEO and Ethics and Compliance.

29.

Plaintiff was restored to full service and seniority by Public Law Board by bench decision on April 19, 2009. Plaintiff returned to work on May 15, 2009.

30.

Plaintiff was given 30 day actual suspension August 12, 2009 again for failure to follow instructions.

31.

Plaintiff had a long standing work record 8 years, and had never been discipline except for a few letters of instructions given by Joshua K. Massey when he became an assistant manager in 2004. While working as assistant manager for the Piedmont Division Mr. Massey gave me letters of instruction on 4-22-04 and 7-9-04.

32.

Joshua K. Massey left the Piedmont division sometime in late 2004.

33.

For 8 years Plaintiff had received nothing only a few letters of instructions, mainly from Joshua K. Massey. In August 2007 Plaintiff was terminated but was restored by labor relations.

34.

Plaintiff filed a timely Charge of Discrimination with the EEOC alleging, inter alia, retaliation on or about May 2008, which file was lost by EEOC and Plaintiff had to refile on August 19, 2009, which file has been also been lost as a Sec. 83 request was made on July 28, 2010.

35.

The EEOC issued a Notice of Right to Sue to Plaintiff by mail dated July 26, 2010, and Plaintiff, having filed this action within ninety (90) days after the receipt of that notice has fulfilled all statutory prerequisites to filing this action.

36.

Plaintiff was terminated by Defendants on October 16, 2010.

37.

Defendants discriminatory conduct, in violation of Title VII and Section 1981, caused the plaintiff to suffer a loss of pay, benefits and prestige.

38.

Defendants intentional and illegal actions caused Plaintiff to suffer mental and emotional distress entitling her to compensatory and punitive damages pursuant to 42 U. S. C. Sec 1981a.

COUNT ONE: TITLE VII-RETALIATION

39.

Plaintiff incorporates herein by reference the preceding paragraphs of the Complaint.

40.

Defendants engaged in retaliation by Terminating Plaintiff for filing inter alia, a Complaint with Norfolk Southern EEO and Ethics and Compliance and The EEOC about Discrimination for Inconsistent Discipline among women especially African American Women and Men and thereby engaged in a protected activity and opposing illegal activity. Any claims of discipline for cause is a pretext to hide the retaliatory motive. The Defendants treated the Plaintiff differently from similarly situated employees. The Defendant further subjected the Plaintiff's work performance to heightened scrutiny after she engaged in the protected activity.

Plaintiff furnished a list of 16 affected men and women to EEO and Ethics and Compliance and The EEOC.

41.

Plaintiff shows that the Defendants terminated Plaintiff on April 4, 2008. Plaintiff had filed a complaint with EEO of Norfolk Southern on March 20, 2008, alleging Discrimination for inconsistent discipline among women especially African American women and men. Plaintiff shows that her termination was 14 days after filing said complaint.

42.

Plaintiff further shows that defendants terminated Plaintiff on October 16, 2010. This was less than 90 days from the EEOC determination and right to sue letter.

43.

Defendants engaged in unlawful retaliation against the Plaintiff, in violation of 42 U.S.C. Sec. 200e et.seq., Title VII of the Civil Rights Act of 1964, as amended by Civil Rights Act of 1991.

44.

Plaintiff filed a timely Charge of Discrimination with the EEOC alleging, inter alia, retaliation on or about May 2008, which file was lost by EEOC and Plaintiff had to refile on August 19, 2009, which file has also been lost.

45.

Plaintiff, having filed this action within ninety (90) days after receipt of that Notice, has fulfilled all statutory prerequisites to filing this action.

Defendants' retaliatory conduct, in violation of Title VII, caused Plaintiff to suffer a loss of pay, benefits, and prestige.

46.

Defendants intentional and illegal conduct and further that the retaliation constitutes a practice undertaken with malice or with reckless indifference to the federally protected rights of an aggrieved individual, which actions caused Plaintiff to suffer mental and emotional distress entitling her to compensatory and punitive damages.

47.

Plaintiff further shows that defendants terminated Plaintiff on October 16, 2010. This was less than 90 days from the EEOC determination and right to sue letter.

48.

Plaintiff has shown that the adverse action of being terminated because of the protected activity of filing complaints concerning Inconsistent discipline against women mainly African American women and Joshua K. Massey is the causal connection since he is the person who imposed the majority of the discipline.

49.

COUNT TWO: SEX DISCRIMINATION

50.

Plaintiff incorporates herein by reference the preceding paragraphs of the complaint.

51.

Defendants engaged in unlawful sex discrimination by failing to take action on Plaintiff's complaint that white males are not disciplined on the same level as women.

52.

Defendants engaged in unlawful sex discrimination against the Plaintiff and other similarly situated women in violation of 42 U. S. C. Sec. 2000e., Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991.

53.

Plaintiff filed a timely Charge of Discrimination with the EEOC alleging, inter alia, retaliation on or about May 2008, which file was lost by EEOC and Plaintiff had to refile on August 19, 2009, which file has also been lost.

54.

The EEOC issued a Notice of Right to Sue to Plaintiff by mail dated July 26, 2010, and Plaintiff, having filed this action within ninety (90) days after the receipt of that notice has fulfilled all statutory prerequisites to filing this action.

55.

Defendants retaliatory conduct, in violation of Title VII, caused Plaintiff to suffer a loss of pay, benefits, and prestige.

56.

COUNT THREE: SECTION 1981-RACE DISCRIMINATION

57.

Plaintiff incorporates herein by reference the preceding paragraphs of the Complaint.

58.

Defendants have engaged in intentional race and age discrimination in the terms and conditions of Plaintiff's employment, including but not limited to discipline and her termination.

59.

Defendants conduct violates 42 U.S.C Sec 1981. Defendants are "employers" engaged in an industry affecting commerce as defined by 42 U.S.C. Sec. 2000e(b).

60.

Defendants discriminatory conduct, in violation of U.S.C. Sec 1981, has caused the Plaintiff to suffer a loss of pay, benefits, and prestige.

61.

Defendants actions have caused Plaintiff to suffer mental and emotional distress, entitling her to compensatory damages.

62.

Defendants have engaged in discriminatory practices with malice and reckless indifference to Plaintiff's federally protected rights, thereby entitling her to punitive damages.

PRAYER FOR RELIEF

62.

Wherefore, Plaintiff prays for certain relief and for a judgment as follows:

1. That the Court allow the Plaintiff's rights and remedies under the Collective Bargaining agreement with Norfolk Southern to proceed in arbitration and that the Court allow the Plaintiff to proceed **PRO SE** .

2. That the Court grant Plaintiff all back pay:

3. That the Court grant Plaintiff compensatory damages for the pain and suffering, humiliation, and emotional distress Defendants cause Plaintiff by Defendant's illegal conduct;

4. That the Court grant Plainttiff punitive damages for Defendants intentional, malicious, and reckless indifferent violations of Plaintiff's federally protected civil rights;

5. That the Court grant Plaintiff expenses of litigation, including reasonable attorney's fees at such time as Plaintiff shall retain legal counsel, all in pursuant of Title VII:

6. That Court grant Plaintiff a trial by a jury of her peers;

7. That the Court grant permanent and injunctive relief prohibiting Defendants from engaging in further discriminatory and retaliatory conduct.

8. That the Court grant Plaintiff any and all other relief the Court deems just and proper.

Respectfully submitted this day of October, 2010.

K. E. Kennedy a/k/a Kandy Kennedy

PRO SE

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